

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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BRADLEY STEPHEN COHEN, et al.,

Case No. 2:12-cv-01401-JCM-PAL

Plaintiffs,

ORDER

v.

(Mot Compel #229)

ROSS B. HANSEN, et al.,

Defendants.

The court held a hearing on Plaintiff's Motion to Compel Defendants to Produce Financial Records (Dkt. #229) on September 1, 2015. Robert Mitchell appeared on behalf of the Plaintiffs, and John Aldrich and Dean von Kallenbach appeared on behalf of the Defendants. The court considered the Motion, Defendants' Opposition (Dkt. #230), Plaintiff's Reply (Dkt. #233) and the arguments of counsel at the hearing. At the hearing counsel for Plaintiffs provided the court with a letter dated August 25, 2015, from opposing counsel with attached records produced after the motion was filed shortly before the hearing.

After hearing the arguments of counsel, the court indicated that the motion to compel would be granted, but that the court would consider the scope of relief ordered after reviewing the supplemental discovery produced by the Defendants just prior to the hearing. The court also directed counsel for Plaintiffs to submit a proposed order outlining the relief requested. The court indicated that a written order would be entered if the case was not resolved at a settlement conference set the following day on September 2, 2015. The parties did not settle, and the court has now reviewed Plaintiffs' Proposed Order (Dkt. #236) as well as the letter and supplemental responses.

Discovery in this case has been contentious and the court has resolved many discovery disputes. In an Order (Dkt. #63) entered April 18, 2013, the court granted Plaintiffs' motion to

1 compel production of documents and set a discovery and dispute resolution conference for
2 Tuesday, May 7, 2013, to address any ongoing disputes because, among other reasons, the
3 district judge had recently granted Plaintiffs' motion to amend the complaint to add Defendant
4 Steven Firebaugh, and Firebaugh's responses to discovery requests were not yet due. At the
5 April 18, 2013 hearing, the court also addressed Plaintiffs' Request for Production of Documents
6 No. 10 which requested financial records relevant to Plaintiffs' punitive damages claims.
7 Defendants Hansen and Northwest objected to responding to these requests. The court advised
8 counsel that the court's practice with respect to financial records relevant to punitive damages
9 claims was to require the parties to serve responsive records after decision of dispositive motions
10 if any punitive damages claims survived.

11 At the status and dispute resolution conference on May 7, 2013, the parties reported on
12 their ongoing discussions and supplementation of discovery. The court continued the status
13 conference until May 21, 2015, directing the parties to file a joint status report by May 17, 2013,
14 with respect to any outstanding disputes that had not yet been resolved. The Joint Status Report
15 (Dkt. #67) was filed May 17, 2013. The status conference was vacated as the parties reported
16 that additional documents had been produced and there was nothing further for the court to
17 consider.

18 On June 9, 2015, the district judge entered an Order (Dkt. #228) granting in part and
19 denying in part Defendants' motion for summary judgment. Two punitive damages claims for
20 defamation per se and false light invasion of privacy survived summary judgment. As a result,
21 on July 16, 2015, Plaintiff's counsel sent a letter to Defendants' counsel requesting that
22 Defendants comply with the court's April 16, 2013 Order (Dkt. #63) concerning production of
23 financial documents relevant to punitive damages claims. Specifically, Plaintiffs requested: (1)
24 the last three years of Defendants' financial statements; (2) the last three years of Defendants'
25 state and federal tax returns; and (3) the last three months of Defendants' bank account
26 statements. According to the motion to compel, Defense counsel responded that he believed
27 Plaintiffs were entitled to these financial records but Defendants refused to produce them.
28 Plaintiffs therefore sought an order of the court compelling Defendants Northwest Territorial

1 Mint, LLC, Hansen and Firebaugh to produce copies of the requested financial records, and a
2 sworn declaration that the records were true, correct and actual copies in advance of the
3 scheduled September 2, 2015, settlement conference.

4 Defendants Northwest, Hansen and Firebaugh opposed the motion pointing out that
5 Plaintiffs did not seek permission to reopen discovery before serving their demand for these
6 financial documents. However, on the merits, counsel for Defendants argued that many of the
7 documents requested did not exist. Plaintiffs' counsel did not believe these representations and
8 demanded that Northwest prepare and sign an IRS Form 4506 authorizing the release of any tax
9 returns filed during the last three years to verify the representation that no tax returns were filed.
10 Counsel for Northwest advised the court that Northwest would provide copies of its bank
11 statements for the last three months within the next few days and would provide the requested
12 forms and documents within the next few days in addition to a signed IRS form 4506.

13 Plaintiffs Replied (Dkt. #233) that Defendants did not and could not dispute the relevance
14 of their financial records to the punitive damages claims that survived summary judgment, and
15 that the opposition did not address Defendant Firebaugh's financial records. The reply asks that
16 the court order Firebaugh to produce: (1) three years of his financial statements or prepare and
17 produce an equivalent with supporting documents including 1099s, W-2s, K-1s, loan
18 applications, list of assets and liabilities, etc.; (2) signed federal and state tax returns for the last
19 three years or signed forms allowing Plaintiffs to confirm that Firebaugh did not file tax returns;
20 (3) the last three months of account statements for all of his bank accounts, brokerage accounts
21 and commodities accounts; and (4) a sworn declaration from Firebaugh that these his financial
22 records are complete, true, and correct and actual copies in the form attached as an exhibit to the
23 reply. Plaintiffs also ask that if Firebaugh fails to produce any financial records, that Plaintiffs
24 be permitted an opportunity to depose him prior to the scheduled settlement conference about his
25 current financial circumstances and net worth.

26 With respect to Hansen's financial records, Plaintiffs' reply requests an order requiring
27 Hansen to produce: (1) the last three years of his financial statements, or prepare and produce an
28 equivalent through QuickBooks or other accounting software with supporting documents

1 including 1099-INT, 1099-DIV, 1099-MISC, 1099-S, 1099-C, 1099-G, 1099-R, W-2s, K-1s,
2 loan applications, list of assets and liabilities, list of precious metals owned, etc.; (2) three years
3 of signed federal and state tax returns or signed federal and state forms allowing Plaintiff to
4 confirm that Hansen did not file tax returns for the last three years; (3) the last thirty-six months
5 of account statement for all of his bank accounts and brokerage and commodities accounts; and
6 (4) a sworn declaration from Hansen that the financial records produced are a complete, true, and
7 correct and actual copies in the form attached as Exhibit 2 to the reply. Similarly, Plaintiffs
8 request that if Hansen fails to produce these financial records, that Plaintiffs have an opportunity
9 to depose Hansen about his current financial circumstances and net worth.

10 With respect to Northwest Territorial, Plaintiffs question the representation that a full
11 service mint and precious metals dealer who employed a certified public accountant, and does
12 business in nationwide locations and worldwide, does not have the records requested. Plaintiffs
13 therefore request an order for Northwest Mint to produce: (1) accounting and auditing records,
14 including its general ledger, for the last three years, and if no records exist, to prepare and
15 produce financial statements or an equivalent with supporting documentation; (2) signed federal
16 and state tax forms allowing Plaintiffs to confirm that Northwest did not file tax returns for the
17 last three years in any states in which Northwest Mint has a location; (3) account statements for
18 the last thirty-six months of all of its bank accounts, brokerage account and commodities
19 accounts; and (4) for its CPA, Samuel Furuness, to submit a sworn declaration that the bank
20 account statements produced are complete, true, and correct and actual copies in the form
21 attached as Exhibit 3 to the reply. Plaintiffs request that the Defendants be ordered to produce
22 the documents no later than August 22, 2015, one week before the September 2, 2015, settlement
23 conference. Plaintiffs also request that the court sanction the Defendants by issuing monetary
24 penalties and/or striking Defendants' answer and affirmative defenses under Rule 16(f) and
25 37(a)(5), (b)(2), (c)(1), and (d).

26 Briefing on the motion to compel did not close until August 19, 2015, when Plaintiff's
27 filed their reply. The matter was set for a hearing on the court's next available date, September
28 1, 2015. It was set the day before the settlement conference so that the court could consider the

1 motion without first reviewing the parties' confidential settlement statements. At the hearing on
2 the motion to compel, counsel for Defendants emphasized that Plaintiffs had changed position
3 with respect to the documents requested from their initial Request for Production No. 10, to the
4 requests made in the July 16, 2015 letter forwarded by counsel for Plaintiffs. Defendants
5 responded to the July 16, 2015 letter by producing the documents requested or indicating they
6 did not exist. Defendants also provided Plaintiffs' counsel with executed IRS form 4506s,
7 authorizing Plaintiffs to contact the IRS and obtain any of the tax filings for the last three years
8 as requested, to confirm that no such returns had been filed with respect to Hansen and
9 Northwest Mint. Steven Firebaugh produced his bank statements for the three month period
10 requested and responded he did not have financial statements. Firebaugh also produced his
11 income tax returns for 2013 and 2014, but was unable to find a copy of his 2012 income tax
12 return.

13 Having reviewed and considered the moving and responsive papers and arguments of
14 counsel,

15 **IT IS ORDERED** that:

- 16 1. Plaintiffs' Motion to Compel (Dkt. #229) is **GRANTED in part** and **DENIED in**
17 **part**.
- 18 2. The Motion to Compel is **GRANTED** to the extent that Defendants Hansen and
19 Northwest Territorial Mint shall have until **October 13, 2015** to serve supplemental
20 responses to Request for Production of Documents No. 10 and provide copies of
21 documents responsive to Request No 10. The supplemental responses shall fully and
22 completely address the requests for bank account statements, brokerage account
23 statements, commodities statements, tax returns and financial statements, including
24 profit and loss statements and balance sheets for the periods January 1, 2011, through
25 the present. Defendants shall respond, in writing, under penalty of Fed. R. Civ. P.
26 26(g), certifying that to the best of the person's or entity's knowledge, information
27 and belief, **formed after a reasonable inquiry**, the discovery response and
28 supplemental disclosures are complete and correct at the time it is made.

1 3. Reasonable attorney's fees and costs will be awarded to counsel for Plaintiffs for the
2 necessity of filing this motion to compel.

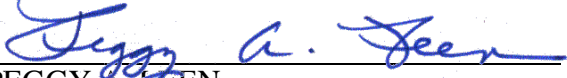
3 A. Counsel for Plaintiffs shall, no later than 14 days from entry of this order,
4 serve and file a memorandum, supported by the affidavit of counsel,
5 establishing the amount of attorney's fees and costs incurred in bringing its
6 motion. The memorandum shall provide a reasonable itemization and
7 description of the work performed, identify the attorney(s) or other staff
8 member(s) performing the work, the attorney(s) or staff member(s) customary
9 fee for such work, and the experience, reputation and ability of the attorney
10 performing the work. The attorney's affidavit shall authenticate the
11 information contained in the memorandum, provide a statement that the bill
12 has been reviewed and edited, and a statement that the fees and costs charged
13 are reasonable.

14 B. Counsel for Defendants shall have 14 days from service of the memorandum
15 of costs and attorney's fees in which to file a responsive memorandum
16 addressing the reasonableness of the costs and fees sought, and any equitable
17 considerations deemed appropriate for the court to consider in determining the
18 amount of costs and fees which should be awarded.

19 4. Defendants will be precluded from using or referring to any financial records that
20 have not been produced pursuant to this order at trial, in motion practice, or for any
21 other purpose to support their defense to Plaintiffs' claims, including punitive
22 damages.

23 5. Any request for relief not specifically addressed in this order is **DENIED**.

24 DATED this 30th day of September, 2015.

25
26 
27 PEGGY A. LEEN
28 UNITED STATES MAGISTRATE JUDGE